
Question 1: People's Veto

Do you want to reject the parts of a new law that change the method of funding Maine's Dirigo Health Program through charging health insurance companies a fixed fee on paid claims and adding taxes to malt liquor, wine and soft drinks?

State of Maine

To the Governor of the State of Maine:

In accordance with Section 17 of Article IV, Part Third of the Constitution of the State of Maine, the undersigned electors of the State of Maine, qualified to vote for Governor, residing in said State, whose names have been certified, hereby propose to veto Public Law 2007, Chapter 629, entitled "An Act To Continue Maine's Leadership in Covering the Uninsured".

Approved
April 16, 2008
By Governor

Chapter
629
Public Law

In the Year of Our Lord
Two Thousand and Eight

Be it enacted by the People of the State of Maine as follows:

PART D

Sec. D-1. 24-A MRSA §6913, as amended by PL 2007, c. 1, Pt. X, §§1 and 2 and affected by §3, is repealed.

Sec. D-2. 24-A MRSA §6913-A is enacted to read:

§ 6913-A. Health access surcharge

1. Health access surcharge on paid claims required from health insurance carriers, 3rd-party administrators and employee benefit excess insurance carriers. All health insurance carriers, employee benefit excess insurance carriers and 3rd-party administrators, not including carriers and 3rd-party administrators with respect to accidental injury, specified disease, hospital indemnity, dental, vision, disability income, long-term care, Medicare supplement or other limited benefit health insurance, shall pay a health access surcharge of 1.8% on all paid claims. The following provisions govern the health access surcharge.

A. A health insurance and employee benefit excess insurance carrier is not required to pay a surcharge on policies or contracts insuring federal employees.

B. The surcharge applies to paid claims beginning July 1, 2008.

C. Surcharge payments must be made monthly to Dirigo Health beginning August 2008 and are due not less than 15 days after the end of the month and must accrue interest at 12% per annum on or after the due date, except that:

(1) Surcharge payments for 3rd-party administrators for groups of 500 or fewer members may be made annually not less than 60 days after the close of the plan year.

D. Surcharge payments received by Dirigo Health must be pooled with other revenues of the agency in the Dirigo Health Enterprise Fund established in section 6915.

2. Failure to pay health access surcharge payments. The superintendent may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any health insurance carrier or employee benefit excess insurance carrier or the license of any 3rd-party administrator to operate in this State that fails to pay a health access surcharge. In addition, the superintendent may assess civil penalties in accordance with section 12-A against any health insurance carrier, employee benefit excess insurance carrier or 3rd-party administrator that fails to pay a health access surcharge, may take any other enforcement action authorized under section 12-A to collect any unpaid health access surcharge payments and may collect the costs of enforcement including attorney's fees from those who fail to pay a health access surcharge.

3. Definitions. As used in this section, the following terms have the following meanings.

A. "Paid claims" means all payments made by health insurance carriers, 3rd-party administrators and employee benefit excess carriers for health and medical services provided under policies issued pursuant to the laws of this State that insure residents of this State or, in the case of 3rd-party administrators, for health care for residents of this State, except that "paid claims" does not include:

(1) Claims-related expenses and general administrative expenses;

(2) Payments made to qualifying providers under a "pay for performance" or other incentive compensation arrangement if the payments are not reflected in the processing of claims submitted for services rendered to specific covered individuals;

(3) Claims paid by carriers and 3rd-party administrators with respect to accidental injury, specified disease, hospital indemnity, dental, vision, disability income, long-term care, Medicare supplement or other limited benefit health insurance, except that claims paid for dental services covered under a medical policy are included;

(4) Claims paid for services rendered to nonresidents of this State;

(5) Claims paid under retiree health benefit plans that are separate from and not included within benefit plans for existing employees;

(6) Claims paid by an employee benefit excess carrier that have been counted by a 3rd-party administrator for determining its savings offset payment;

(7) Claims paid for services rendered to persons covered under a benefit plan for federal employees; and

(8) Claims paid for services rendered outside of this State to a person who is a resident of this State.

In those instances in which a health insurance carrier, employee benefit excess insurance carrier or 3rd-party administrator is contractually entitled to withhold certain amounts from payments due to providers of health and medical services in order to help ensure that the providers can fulfill any financial obligations they may have under a managed care risk arrangement, the full amounts due the providers before application of such withholds must be reflected in the calculation of paid claims.

B. "Claims-related expenses" includes:

(1) Payments for utilization review, care management, disease management, risk assessment and similar administrative services intended to reduce the claims paid for health and medical services rendered to covered individuals, usually either by attempting to ensure that needed services are delivered in the most efficacious manner possible or by helping such covered individuals to maintain or improve their health; and

(2) Payments that are made to or by organized groups of providers of health and medical services in accordance with managed care risk arrangements or network access agreements, which payments are unrelated to the provision of services to specific covered individuals.

C. "Health and medical services" includes, but is not limited to, any services included in the furnishing of medical care, dental care to the extent covered under a medical insurance policy, pharmaceutical benefits or hospitalization, including but not limited to services provided in a hospital or other medical facility; ancillary services, including but not limited to ambulatory services; physician and other practitioner services, including but not limited to services provided by a physician's assistant, nurse practitioner or midwife; and behavioral health services, including but not limited to mental health and substance abuse services.

4. Rulemaking. The board may adopt any rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. D-3. 24-A MRSA §6915, as amended by PL 2005, c. 386, Pt. D, §3, is further amended to read:

§ 6915. Dirigo Health Enterprise Fund

The Dirigo Health Enterprise Fund is created as an enterprise fund for the deposit of any funds advanced for initial operating expenses, payments made by employers and individuals, revenues transferred pursuant to Title 28-A, section 1652, subsection 5 and Title 36, section 4853, any savings-offset payments made pursuant to former section 6913 and section 6913-A and any funds received from any public or private source for the Dirigo Health Program and the Maine Individual Reinsurance Association established by chapter 54. An amount equal to 18.8% of the deposits received by the Dirigo Health Enterprise Fund from revenues transferred pursuant to Title 28-A, section 1652, subsection 5 and Title 36, section 4853, revenues deposited pursuant to section 6913-A must be transferred to the Maine Individual Reinsurance Association by the first of each month beginning July 1, 2010. The fund may not lapse, but must be carried forward to carry out the purposes of this chapter.

Sec. D-4. 36 MRSA §4404-D is enacted to read:

§ 4404-D. Tax credited to Dirigo Health Enterprise Fund

The State Controller shall transfer by the 15th of each month from General Fund revenues to the Dirigo Health Enterprise Fund established under Title 24-A, section 6915 the amount of tax collected pursuant to this chapter that exceeds the total fiscal year-to-date budget projection for that tax revenue as of the close of the preceding month based on the tax rate imposed by this chapter that was in effect on July 1, 2008. For purposes of this section, "budget projection" is the amount derived from the March 1, 2008 report of the Revenue Forecasting Committee established under Title 5, section 1710-E regarding the tax that is imposed by this chapter, as determined on a monthly basis by the assessor.

Sec. D-5. Savings offset payments calculated prior to effective date. Notwithstanding that section of this Part that repeals the Maine Revised Statutes, Title 24-A, section 6913, the savings offset payments that have been calculated and required under former Title 24-A, section 6913 for claims paid prior to the effective date of this Part are due and payable in the same manner and subject to the same procedures set forth in former Title 24-A, section 6913 until the first monthly health access surcharge required under Title 24-A, section 6913-A becomes due and payable.

Sec. D-6. Transfers to Dirigo Health Enterprise Fund in fiscal year 2008-09. Notwithstanding the Maine Revised Statutes, Title 28-A, section 1652, subsection 5, the total fiscal year-to-date budget projection excludes any period in fiscal year 2008-09 prior to the effective date of this Part.

Sec. D-7. Effective date. This Part takes effect July 1, 2008 or on the effective date of this Act, whichever occurs later.

PART E

Sec. E-1. 28-A MRSA §1652, sub-§1, as repealed and replaced by PL 1987, c. 342, §116, is amended to read:

1. Excise tax on malt liquor. An excise tax is imposed on the privilege of manufacturing and selling malt liquor in the State. The Maine manufacturer or importing wholesale licensee shall pay an excise tax of 25¢ per gallon on all malt liquor sold in the State that is manufactured by a manufacturer that produced a total of less than 100,000 barrels of malt liquor in the previous calendar year and 54¢ per gallon on all other malt liquor sold in the State.

Sec. E-2. 28-A MRSA §1652, sub-§2, as amended by PL 1997, c. 767, §4, is repealed and the following enacted in its place:

2. Excise tax on wine; hard cider. An excise tax is imposed on the privilege of manufacturing and selling wine and hard cider in the State. The Maine manufacturer or importing wholesale licensee shall pay an excise tax of:

B. Thirty cents per gallon on all wine, other than sparkling wine, that is manufactured by a manufacturer that produced a total of less than 20,000 gallons of wine, other than sparkling wine, in the previous calendar year;

C. Sixty-five cents per gallon on all wine, other than sparkling wine and except as provided in paragraph B, manufactured in or imported into the State;

D. One dollar per gallon on all sparkling wine manufactured in or imported into the State; and

E. Twenty-five cents per gallon on all hard cider manufactured in or imported into the State.

Sec. E-3. 28-A MRSA §1652, sub-§5 is enacted to read:

5. Tax credited to Dirigo Health Enterprise Fund. The State Controller shall transfer by the 15th of each month from General Fund revenues to the Dirigo Health Enterprise Fund established under Title 24-A, section 6915 the amount of tax collected pursuant to this section that exceeds the total fiscal year-to-date budget projection for that tax revenue as of the close of the preceding month based on the tax rate for malt liquor and wine, except sparkling wine, that was in effect on July 1, 2008. For purposes of this section, "budget projection" is the amount derived from the March 1, 2008 report of the Revenue Forecasting Committee established

under Title 5, section 1710-E regarding the tax that is imposed by this section, as determined on a monthly basis by the State Tax Assessor.

Sec. E-4. Effective date. This Part takes effect August 1, 2008.

PART F

Sec. F-1. 36 MRSA c. 720 is enacted to read:

CHAPTER 720

SOFT DRINK AND SYRUP TAX

§ 4851. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Bottle. "Bottle" means any closed or sealed glass, metal, paper or plastic container or any other type of container regardless of the size or shape of the container.

2. Bottled soft drink. "Bottled soft drink" means any ready-to-consume soft drink contained in a bottle.

3. Distributor, manufacturer or wholesale dealer. "Distributor, manufacturer or wholesale dealer" means any person who receives, stores, manufactures, bottles or sells bottled soft drinks, syrup, simple syrup or powder or base products for mixing, compounding or making soft drinks for sale to retailers or other manufacturers, wholesale dealers or distributors for resale purposes.

4. Milk. "Milk" means natural liquid milk regardless of animal source or butterfat content; natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or dehydrated natural milk, whether or not reconstituted.

5. Natural fruit juice. "Natural fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of fruit juice concentrate or the liquid resulting from the restoration of water to dehydrated fruit juice.

6. Natural vegetable juice. "Natural vegetable juice" means the original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of vegetable juice concentrate or the liquid resulting from the restoration of water to dehydrated vegetable juice.

7. Nonalcoholic beverage. "Nonalcoholic beverage" means any beverage not subject to tax under Title 28-A, Part 4.

8. Place of business. "Place of business" means any place where soft drinks, syrups, simple syrups or powder or base products are manufactured or any place where bottled soft drinks, syrup, simple syrup, powder or base product or any other item taxed under this chapter is received.

9. Powder or base product. "Powder or base product" means a solid mixture of basic ingredients used in making, mixing or compounding soft drinks by mixing the powder or other base with water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, vegetable juice or any other product suitable to make a soft drink.

10. Retailer. "Retailer" means any person, other than a distributor, manufacturer or wholesale dealer, who receives, stores, mixes, compounds or manufactures any soft drink and sells or otherwise dispenses the soft drink to the ultimate consumer.

11. Sale. "Sale" means the transfer of title or possession for a valuable consideration of tangible personal property regardless of the manner by which the transfer is accomplished.

12. Simple syrup. "Simple syrup" means a mixture of sugar and water.

13. Soft drink. "Soft drink" means any nonalcoholic beverage, whether naturally or artificially flavored, whether carbonated or noncarbonated, sold for human consumption, including, but not limited to, soda water, cola and other flavored drinks, any fruit or vegetable drink containing 10% or less of natural fruit juice or natural vegetable juice and all other drinks and beverages commonly referred to as soft drinks, but not including coffee or tea unless the coffee or tea is bottled as a liquid for sale.

14. Syrup. "Syrup" means the liquid mixture of basic ingredients used in making, mixing or compounding soft drinks by mixing the syrup with water, simple syrup, ice, fruits, vegetables, fruit juice, vegetable juice or any other product suitable to make a soft drink.

§ 4852. Tax rate

1. Tax imposed. There is imposed a tax on every distributor, manufacturer or wholesale dealer to be calculated as follows:

- A. Four dollars per gallon of syrup or simple syrup sold or offered for sale;
- B. Forty-two cents per gallon of bottled soft drinks sold or offered for sale; and
- C. When a package or container of powder or base product is sold or offered for sale in the State, the tax on the sale of each package or container is equal to 42¢ for each gallon of soft drink that may be produced from each package or container by following the manufacturer's instructions. This tax applies when the powder or base product is sold to a retailer for sale to the ultimate consumer after the soft drink is produced by the retailer.

2. Purchase from unlicensed seller. A retailer who purchases bottled soft drinks, syrup, simple syrup or powder or base product from an unlicensed distributor, manufacturer or wholesale dealer is liable for the tax imposed in subsection 1.

§ 4853. Tax credited to Dirigo Health Enterprise Fund

The State Controller shall transfer by the 15th of each month from General Fund revenues to the Dirigo Health Enterprise Fund established under Title 24-A, section 6915 the amount of tax collected pursuant to this chapter.

§ 4854. Exemptions

The following are exempt from the tax imposed by section 4852:

1. Sales to Federal Government. Syrups, simple syrups, powder or base products or soft drinks sold to the Federal Government;

2. Products exported from State. Syrups, simple syrups, powder or base products or soft drinks exported from the State by a distributor, manufacturer or wholesale dealer;

3. Coffee or tea base. Any powder or base product used in preparing coffee or tea;

4. Juice or vegetable concentrate. Any frozen, freeze-dried or other concentrate to which only water is added to produce a nonalcoholic beverage containing more than 10% natural fruit juice or natural vegetable juice;

5. Fruit or vegetable juice. Any nonalcoholic beverage containing more than 10% natural fruit juice or natural vegetable juice;

6. Sales to another distributor, manufacturer or wholesale dealer. Syrups, simple syrups, powders or base products or soft drinks sold by a distributor, manufacturer or wholesale dealer to a distributor, manufacturer or wholesale dealer who holds a license under section 4856 if the license number of the distributor, manufacturer or wholesale dealer to whom the syrups, simple syrups, powder or base products or soft drinks are sold is clearly shown on the invoice for the sale that is claimed to be exempt. This exemption does not apply to any sale to a retailer;

7. Infant formula. Any product, whether sold in liquid or powder form, that is intended by its manufacturer for consumption by infants and that is commonly referred to as infant formula;

8. Water. Water to which no flavoring, whether artificial or natural, has been added and that has not been artificially carbonated;

9. Dietary aids. Any product, whether sold in liquid or powder form, that is intended by its manufacturer for use as a dietary supplement or for weight reduction;

10. Consumer mix. Any powder or base product that is intended by its manufacturer to be sold and used for the purpose of domestically mixing soft drinks by the ultimate consumer; and

11. Milk products. Any product containing milk or milk products.

§ 4855. Reports

A distributor, manufacturer or wholesale dealer and any retailer subject to the tax imposed by this chapter shall file a monthly return with the assessor and pay the tax on or before the 15th day of the month following the month in which the sale or purchase was made. The return must be made on a form prescribed by the assessor. The return must contain any information the assessor requires for the proper administration of this chapter. When a retailer is also acting as a distributor, manufacturer or wholesale dealer, the duty to report and pay the tax imposed by this chapter arises when the property is transferred to a retail store for sale to the ultimate consumer, as reflected by the records of the taxpayer.

§ 4856. Licenses

1. Distributor, manufacturer or wholesale dealer. Any distributor, manufacturer or wholesale dealer who sells or offers for sale to retailers within the State syrups, simple syrups, powder or base products or soft drinks shall obtain from the bureau a license for the privilege of conducting such business within the State.

2. Retailer. Any retailer who purchases syrups, simple syrups, powder or base products or soft drinks from a distributor, manufacturer or wholesale dealer not licensed under subsection 1 shall obtain a license from the bureau for the privilege of conducting such business.

3. Location; display. Any person required to obtain a license under this section shall obtain a license for each place of business owned or operated by that person. The license must be conspicuously displayed at the place of business for which it was issued.

§ 4857. Penalties

1. Failure to file, pay. A person required to file a return and pay tax under this chapter is subject to the same penalties as for failure to file and pay sales tax under Part 3.

2. Failure to obtain license. A person required to obtain a license under section 4856 who fails to do so is subject to the same penalties as for failure to register as a retailer under section 1754-B.

§ 4858. Rules

The assessor may adopt rules under the Maine Administrative Procedure Act to provide for the administration of this chapter. These rules may provide for a fee to cover the cost of issuing licenses required under section 4856. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. F-2. Effective date. This Part takes effect August 1, 2008.

Intent and Content Prepared by the Office of the Attorney General

This referendum asks whether Maine voters want to approve or disapprove those portions of newly enacted legislation that change the method of funding the Dirigo Health Program, established by the Legislature in 2005.

The Dirigo Health Program is currently funded through a charge of up to 4% on claims paid by private health insurance carriers, employee benefit excess insurance carriers and third party administrators, known as the "savings offset payment". The amount of the savings offset payment is based on a determination, made annually by the Board of Directors of the Dirigo Health Agency and subject to approval of the Superintendent of Insurance, of aggregate measurable cost savings to the health care system as a result of the operation of Dirigo Health. These savings include, but are not limited to, reductions in the amount of bad debt and cost of charity care provided by Maine hospitals to people who were formerly uninsured or underinsured.

Legislation enacted in June (Public Laws of 2007, Chapter 629) amended the Dirigo Health Program statute to replace the savings offset payment with funding from three different revenue sources:

- Part D establishes a health access surcharge on paid insurance claims at a fixed rate of 1.8%;
- Part E increases the existing excise tax from 25 cents per gallon to 54 cents per gallon on malt beverages sold in Maine from producers who manufacture more than 100,000 barrels of malt beverages per year, and increases the excise tax from 30 cents per gallon to 65 cents per gallon on wine manufactured or distributed in Maine from producers who make more than 20,000 gallons each year; and
- Part F imposes a new tax of \$4 per gallon of syrup used to make soft drinks and 42 cents per gallon of bottled soft drinks sold or offered for sale in Maine. The legislation exempts from this new tax the powder or base product used to produce coffee or tea; juice or vegetable concentrates that contain more than 10% natural fruit or vegetable juice; unflavored non-carbonated water; and any product containing milk or milk products.

After the legislation including the above-described changes was passed by the Legislature and signed by the Governor in June 2008, petitioners collected a sufficient number of signatures of registered voters to refer Parts D, E and F to the people for approval or disapproval at a statewide election. The effect of these parts of the legislation has been suspended pending the outcome of the election.

A "YES" vote is *in favor of the people's veto* and *disapproves* Parts D, E and F of the legislation that would change the method of funding the Dirigo Health Program.

A "NO" vote is *in opposition to the people's veto* and *approves* Parts D, E and F of the legislation that would change the method of funding the Dirigo Health Program.

Fiscal Impact Statement **Prepared by the Office of Fiscal and Program Review**

Assuming successful passage of the people's veto of Parts D, E and F of Public Law 629 "An Act To Continue Maine's Leadership in Covering the Uninsured", the following anticipated revenue impacts from implementing Parts D, E and F on January 1, 2009 will no longer occur:

General Fund	2008-09	2009-10	2010-11
Sales tax increase on increased beer and wine excise tax	\$161,760	\$480,890	\$480,890
Dirigo Health Fund			
Elimination of the savings offset payment	(\$20,200,000)	(\$32,000,000)	(\$32,000,000)
Paid claims surcharge	\$18,000,000	\$37,080,000	\$38,192,400
Soft drink tax	\$5,110,945	\$11,649,500	\$11,859,191
Excise tax on beer and wine	\$3,409,062	\$8,181,749	\$8,181,749
Dirigo Health Fund Revenue	\$6,320,007	\$24,111,249	\$25,433,340

Public Comments

No public comments were filed in support or in opposition to Question 1.